UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1997/NGO/29
7 August 1997

Original: ENGLISH

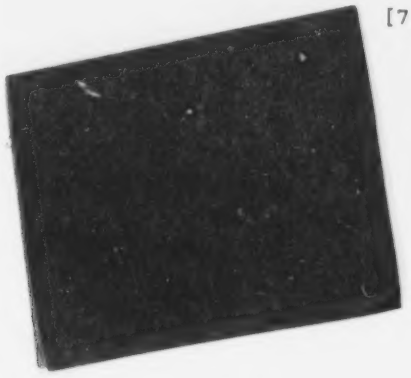
COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-ninth session
Agenda item 4 (c)

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE QUESTION OF TRANSNATIONAL CORPORATIONS

Written statement submitted by the Worldview International Foundation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 August 1997]



GE.97-13278 (E)

International trade and human rights

1. The relationship between international trade and human rights, and the role of transnational corporations in the promotion, or abuse, of human rights, have not been well studied. The relationship can be obvious, as when a corporation participates as a partner with a Government in a development project that gives rise to human rights violations. More often, the relationship is more subtle and the responsibilities of the corporation and of the State out of which it operates have not been thought out. We would therefore like to bring to the Sub-Commission's attention, through case studies involving Tibet and Myanmar some of the issues that deserve the Sub-Commission's attention.

2. The Government of China's policy and practice of population transfer into Tibet, in aid of its efforts to develop Tibet economically and exploit its resources, has been well documented before the Sub-Commission and the Commission. In aid of its exploitation of Tibet, the Government of China has received the assistance of many transnational corporations.

3. One of the more blunt ways in which transnational corporations have participated in and fostered human rights abuses is in the exploitation of natural resources. Transnational corporations have entered into agreements with the Government of China to engage in mining, including open-pit mining on a vast scale. The mining itself violates the Tibetans' rights to self-determination (to freely determine their economic, social and cultural development and to freely dispose of their natural wealth and resources) and to religious and cultural freedom (because Tibetan culture abjures wholesale destructive mining). Moreover, none of the mining benefits the Tibetans, as the resources are routinely transferred out of Tibet. These human rights violations are inherent in the mining operations, regardless of the precise manner in which they are carried on.

4. Another example of a violation of the Tibetans' right to self-determination, to religious and cultural freedom and to a sustained environment is the Yamdrok Tso hydroelectric project. This project was started over the strong objections of the Tibetan people and is now near completion. It threatens the environment surrounding and desecrates a lake considered sacred by the Tibetan people. Still, that project was not and could not have been built without substantial participation by transnational corporations which supplied equipment and expertise. In addition, the primary purpose of the project is to supply additional electric power to the Lhasa area, which already has a majority Chinese population, in order to support the transfer of more Chinese into that region.

5. In addition, the jobs that have been generated by large development projects, supported by transnational corporations, have largely benefited the transplanted Chinese, not the Tibetans. There is ample evidence of discrimination in jobs, with the Chinese obtaining most of the skilled and managerial positions and the Tibetans getting, at best, unskilled positions.

6. There is evidence, furthermore, that on large infrastructure projects, Tibetans have been forced to "contribute" labour as part of a community contribution. Also, prisoners in "re-education through labour" and "reform

through labour" camps, many of whom are prisoners of conscience, have been pressed into work on large-scale logging operations in eastern Tibet. The use of such forced labour violates the International Covenant on Civil and Political Rights and the two International Labour Organization Forced Labour Conventions. To the extent transnational corporations are partners in such development or logging operations, they are aiding and abetting gross human rights violations.

7. The use of forced labour in violation of international law has been documented in Myanmar as well, involving projects carried on in partnerships between the Government of Burma and transnational corporations. One example is the recent United States lawsuit brought against the Unocal corporation, based on its participation in an oil pipeline project in Myanmar during which government officials and soldiers carried out forced labour and committed rape and torture.

8. Certainly, the managers and shareholders of such corporations have a moral responsibility to prevent and eliminate human rights abuses arising during the execution of projects in which they are participating. They may also have legal responsibility under some States' laws. Unocal, for example, under the United States Alien Tort Claims Act, has a direct legal responsibility to avoid and prevent human rights abuses. Such potential liabilities under individual States' laws, however, are limited and rare. In addition, international human rights treaties and conventions generally do not, by their nature, apply to private firms or persons. States are the contracting parties and thus have the ultimate legal responsibility to honour their treaty obligations.

9. It is clear that a State has the legal responsibility to prevent human rights violations and to ensure compliance with its treaty obligations within its own territory. The Sub-Commission, and the international community generally, can and should hold the Government of China responsible for human rights violations within Tibet and the present Government of Myanmar for human rights abuses in that country. We remain concerned, however, about the ability of transnational corporations to operate with impunity in partnership with States, such as China and Myanmar which routinely violate, and permit the violation of human rights within their territories. The ability of corporations to so operate is aided by the fact that the Governments of China and Myanmar have so far not ratified the two International Covenants and both continue to violate treaties to which they are a party. Corporations who knowingly contribute to human rights violations should not be allowed to absolve themselves of responsibility by claiming that any human rights violations are the responsibility of the State in which they occur, or are solely a matter for enforcement by States.

10. We contend that States do have an obligation to ensure that firms operating from their territory and under their protection are not contributing to the violation of human rights in other States' territories. The Charter of the United Nations requires all Members to "take joint and several action" to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". This obligation is repeated in the two International Covenants and in the Universal Declaration of Human Rights. We therefore submit that a

State, to be consistent with that obligation, cannot permit a corporation constituted and operating under the protection of its laws (and, with respect to international projects, often with the direct or indirect financial and/or political support of that State) to engage in practices in another State that violate fundamental human rights.

11. In light of the evidence of participation by transnational corporations in human rights violations in places such as Tibet and Myanmar, we call upon the Sub-Commission to examine further the ways in which transnational corporations may participate directly and indirectly in human rights violations through development projects carried out in cooperation with the State. Further, the Sub-Commission should affirm that States have the responsibility, as part of their obligation to promote fundamental human rights, to monitor firms and corporations operating from their territories and under their protection in order to prevent human rights violations in any part of the world.